

The preferable answer to the paparazzi problem remains explicit, carefully drafted legislation that creates criminal and civil sanctions for seriously offensive, intentional, or reckless intrusion upon an individual's solitude or seclusion or into his private affairs.<sup>21</sup> But the swiftly developing acceptance by numerous jurisdictions<sup>22</sup> of the principles of 'fair information practice' embodied in the European Directive on Data Protection of 1995, and our own legislation, offer a promising, workmanlike alternative by which to curb the worst excesses of the media.

*Raymond Wacks\**

### The State of Hong Kong's Legal Literature: Law Reports, Legislation, and Current Awareness

The range and nature of legal literature available in Hong Kong has undergone a remarkable transformation in the past few years. We have seen the emergence of two new series of law reports, one of which bids fair to swallow up the competition, a rescue bid for one series apparently mounted by the publishers of a digest, the birth of a new 'current awareness' publication, the emergence of the unblissful BLIS and its replacement by a much improved version, and the publication of two CDs — of publications otherwise in paper format; not to mention the first appearance of Hong Kong material on LEXIS.

#### Law reports — in paper format

##### *The Hong Kong Law Reports*

Having first of all bifurcated into two series (in addition to the long-standing Hong Kong District Law Reports sub-division) — with the emergence of the Hong Kong Criminal Law Reports — it almost seemed that, exhausted with the effort, the Hong Kong Law Reports were to disappear entirely. No individual parts appeared at all in 1996, but towards the end of the year two bound volumes appeared under the imprint of Pearson Professional. In 1997 the reincarnation was complete when 'The Authorized Hong Kong Law Reports and Digest' began to appear. The full structure of this is discussed below.

<sup>21</sup> The sub-committee's mind is currently running along these lines, but I dare not say more until our recommendations enter the public domain, which ought to be soon.

<sup>22</sup> There are several signs that even in the recalcitrant United States a belated recognition is emerging that a comprehensive legal regime is required to provide individuals with the right to control the collection and use of their personal data. See, for example, Susan E Gindin, 'Lost and Found in Cyberspace: Informational Privacy Rights in the Age of the Internet' (1997) <<http://www.info-law.com/articles.html>>.

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The law reports now have longer headnotes than under the old regime, and the headnote is trendily encased in a grey 'text box,' to use computer-speak. The headnotes still contain references to cases cited in the judgment(s), but have not taken a leaf out of the book of the Hong Kong Cases and included legislation cited, cases cited in argument, or other material cited anywhere.

The distinct Criminal Law Reports and District Court Reports have disappeared, and reports of District Court cases seem to be gradually fading away: there were twenty in 1995, four in 1996, and two in 1997.

If the HKLR appeared separately would anyone buy them? 'Authorized' in the title seems to mean simply that the Judiciary Department has appointed Pearson to publish them. There is, for example, no direction that they should be cited in preference to any other report, and judgments may just as well be revised by the judges in the other series. In 1997 there were 161 cases reported in the HKLR and 220 in Hong Kong Cases and Hong Kong Public Law Reports combined (the latter figure may not be final, as will be apparent later). However, of the 161 cases in HKLR, 81 had not been reported in the other publications by the time of writing. No doubt others will be reported later, but it is clear that there is by no means a complete overlap between the two series.

The cover of the revamped HKLRD is elegant, but I would rather have less elegance and more information. At least HKC includes on the cover a list of all cases reported, which means that one can pick up an issue knowing immediately (or very quickly if the list of cases continues inside the cover) whether it contains the case you are looking for. The HKLR contains no such list on the cover. Even worse, perhaps, it is difficult to find a list inside. In fact, there is no 'Table of Cases Reported' such as we have all been educated to expect in a serious law report. The 'Cases Reported in ....' is a subject index and not a list in alphabetical order. Buried towards the back of the Digest section is a cumulative index of cases, both those reported and those digested in the publication.

At the top of each page of the new publication's law report pages there is a running head including the abbreviation [1997] HKLRD. No bound volumes for 1997 have appeared. One assumes that they will be bound as Law Reports and Digest separately. But it seems that the full name is permanently attached to both sections. So we shall have on our shelves a volume called Hong Kong Law Reports and Digest which contains only reported cases, and another of the same title which contains the Digest material. How are we to distinguish between them? How are unfortunate librarians to deal with them? Another oddity, suggesting, to this user's mind, inadequate advance thought, is that by the end of 1997 there were 1,393 pages of case reports, but no indication at the top of the page that there will be more than one volume. It seems likely that they will be bound into two physical volumes, one running from page 1 and the other from page 700 or thereabouts, but no distinction between the volumes

otherwise. In other words we shall have reverted to the 1957–88 situation, familiar to regular users of the reports.

Even the fully reported cases have paragraph numbers on the same system as the Digest section. Is this going to have any continued meaning when the volumes are rebound? One assumes they do not want to reset all these pages before they are bound.

I understand that there are plans to take on board some at least of these issues, in the near future, and that changes will include more reported cases.

### *Hong Kong Cases*

This series has been a most welcome addition to the Hong Kong lawyer's library. It now goes back to 1946, and current issues have been appearing pretty regularly — though with not quite the punctuality that one associates with the publishers' products elsewhere such as the All England Law Reports. Whereas each All England Law Reports part has a separate number, the part numbering in HKC begins again for each volume (but the volume number does not appear on the front cover of the part — a minor irritant, and a quite unnecessary one). As I write (late February 1998), no 1998 parts seem to have appeared and the latest seen is Part 6 of Volume 3 for 1997, dated 7 November 1997. It has been confusing on a number of occasions to discover that a case is reported in a part the date of which is earlier than the date on which the case was decided! A rather odd thing happened in 1996 when, after the publication of regular parts through the year, and their republication as bound volumes, a fourth bound volume appeared — in fact around the end of 1997 — catching at least some of us unawares.

On the whole I have few complaints about this publication. It does have a list of cases on the front of each part (though not an indication of topic, a practice in the Weekly Law Reports which it would be good to see emulated).

The appearance of the index volume for 1946 to 1995 was also welcome — though its layout could have been more user-friendly: the absence of an indication at the head of each page of what the main heading is (hint — look at the list at the beginning of the volume) has been a minor irritant.

One should also mention here another Butterworth initiative — the consolidated index of reported Hong Kong cases covering all Hong Kong series of reports, as well as in other series such as All England Law Reports, Lloyd's List Law Reports, and so on. Thus far we have two volumes, covering up to 1995 and containing the Table of Cases Reported, a Table of Hong Kong Decisions Referred To, and a Table of Other Cases Referred To. The enterprise seems to have faltered, for the other volumes containing a subject index and legislation referred to have not appeared, nor have any updates. The promised CD version of this publication would also be very valuable.

*Hong Kong Public Law Reports*

Are these also a dying series, one wonders? Publication having shifted from the Hong Kong University Press to Butterworths, the periodic parts have appeared since early 1996 in the same monthly issues as Hong Kong Cases, although not every monthly issue has any HKPLR cases. But while the re-bound Hong Kong Cases have been appearing with reasonable promptitude, there has been no separate volume of the HKPLR since that for 1995. This means that it is necessary to hang onto the monthly parts of HKC when the tidy librarian wants to throw them out as having been replaced by bound volumes!

The boundary between 'Public Law' and the rest seems imprecise as viewed in HKC. A striking example was *HKSAR v Ma Wai-kwan*, the first Basic Law case which appeared in HKC ([1997] 2 HKC 315) though it was surely as public law a case as one could wish to find!

**Current awareness**

By this expression I mean publications designed primarily to provide up-to-date summaries of recent developments, such as one finds in the various publications known as 'Current Law' in UK, Canada, Australia, or the Australian Legal Monthly Digest. Once upon a time there was a 'Current Law' in Hong Kong, but this was renamed the Hong Kong Law Digest. Recently a new Current Law Hong Kong has materialised.

*The HKLRD: digest function*

Each monthly issue contains the following sections (divided by blue cards): law reports, digests: cases, digests: legislation, indices (not divided by cards but with black page-edge indicators. The indices are (i) legislation including commencement dates — this is a cumulative, alphabetical list of all pieces of legislation, principal and subsidiary, passed in the current year with references to paragraphs in the HKLRD where they are digested; (ii) amended legislation — cumulative, alphabetical list of ordinances and subsidiary legislation amended; (iii) legislation judicially considered during the year so far; (iv) a cumulative index of cases, covering both those reported and those digested in the HKLRD; (v) a cumulative table of cases judicially considered; and (vi) a cumulative index.

This publication is modelled on the English Current Law. It is, however, distinctly inferior in the quantity and quality of information which it contains. Although there are digests of cases, the notes on legislation hardly merit such a description. They simply do not make any real attempt to explain what the effect of the legislation is.

Quality aside, the most irritating aspect of this publication has always been, and remains, to this reader's mind, the system of indicating parts by the use of

a letter and not a number or a name: thus the January part is called A for the purposes of index references and paragraph numbering, not 1 or Jan. Most of us know quite quickly that August is the eight month — how long does it take you to work out that it is H? We are not helped by the absence of the month letter on the spine of the individual parts.

A further irritant in using the publication is the incestuous approach which seems to indicate that the existence of Hong Kong Cases should be ignored. An impression is that none of the case digests in the monthly parts refers to the HKC. This may be because HKLRD receives the unreported judgments direct from the judiciary and is thus able to digest them before HKC have reported them. But if this self-referring approach is continued in the bound volumes their usefulness will be substantially reduced. In the list of legislation judicially considered, the citation to the cases is always in the HKDLR — month number and paragraph. Even the citations to the cases are in the same format.

### *Current Law Hong Kong*

Sweet and Maxwell (in the UK the major law publishing rival to Butterworth) has been easing itself into the Hong Kong market. Their periodical contribution has been *Current Law Hong Kong*.<sup>1</sup> This slim, monthly A4 publication has some distinct oddities. One is terminological: the whole publication is called *Current Law Hong Kong* though its cover adds '(Incorporating Asian Legal Journals Index).' Inside are the following sections: 'Current Law Hong Kong,' 'Current Law Case Citator,' 'Asian Legal Journals Index: Subject Index,' and 'Asian Legal Journals Index: Legislation Index.' In the sixty pages of the October 1997 issue these occupied eight, 22, 24, and five pages respectively. I shall comment briefly on each.

'Current Law Hong Kong' comprises summaries of cases (taken from the Hong Kong Public Law Reports, the Hong Kong Law Reports and Digest — just reported cases — and Hong Kong Cases) and of press releases (the Securities and Futures Commission being a fruitful source). The summary of the contents which appears under the section title indicates that the section includes also Hong Kong legislation; elsewhere it is made clear that legislation appears in the last section, not the first! 'Current Law Hong Kong' has familiar headings (listed on p iii) from Accountancy to Wills. One wonders why there are headings of 'Defamation' and 'Negligence' as well as 'Tort,' the more so when the October 'Tort' heading includes two defamation cases! Of the 53 paragraphs in the October issue, twelve are summaries of SFC press releases while only nineteen cases are actually summarised. All the other paragraphs are cross-references to other paragraphs. In one case the cross-references are totally

<sup>1</sup> Sweet & Maxwell are the publishers of *Current Law* in the UK, which is the major current awareness publication — a grander version of the Hong Kong Law Digest. The latter was originally called Hong Kong Current Law.

circular (relating to *the Hong Kong Polytechnic University v Next* case<sup>2</sup>): para 39 refers to paras 41 and 51, para 41 to 39 and 51, and 51 to 39 and 41 — and none of them ever gets beyond catchwords to an actual summary. By way of contrast the case digest section of the HKLRD for October 1997 contains summaries of 54 cases.

'Current Law Case Citator' is a citator in a wider sense than I would usually use the expression, since it includes references to casenotes or articles discussing the case. Irritatingly, to find the citation to a case in which another case has been referred to is a two-step process. One can find the case cited, and the name and citation will be followed by a remark such as 'considered in...' with the name only of the case which considered it. One then has to go to the latter case in the list for its own citation. To take one example: in October 1997 the following entry appears: '*Allen v Gulf Oil* [1981] AC 1001 considered, cited in *Chan Jak Tung v Baltrans Ltd*' one then has to go to the separate entry for the latter case to find out where it is reported.<sup>3</sup> What do they mean by 'considered, cited'? Turning to that latter case I find that Waung J quoted from Lord Wilberforce in *Allen*. 'Cited' would have done; it was not 'considered' in the sense that it was discussed. The articles which discuss cases are those abstracted in the third section of this publication — only a small number therefore. Since those articles do not discuss only Hong Kong law, some of the cases discussed have nothing to do with Hong Kong either. Finally, beside each case is an indication of the subject matter of the citing case. I am not sure how useful this is; if one is looking for a case which is cited somewhere one usually knows already what the case is about. Maybe this is churlish; it is true that I would not have bothered to peruse the case which cited *Allen v Gulf* if I had been interested in nuisance (the main topic of *Allen*) because it was indicated that the context of its citing was 'Courts/trials.'

'Asian Legal Journals Index: Subject Index': we are told that this covers 'journals published in South East Asia and articles on South East Asia published in the UK or internationally.' What this actually means is a small number of very professionally oriented journals (excluding the Hong Kong Law Journal and the Journal of Comparative and Chinese Law) and the occasional more academic foreign journal. Things like the Hong Kong Lawyer, China Law and Practice, and Asiamoney. No Singapore Law Review, nothing from Malaysia.

Finally, the 'Asian Legal Journals Index: Legislation Index.' This covers various countries though the information on Hong Kong is much fuller. For Hong Kong there is a list of legislation including delegated legislation, with the Gazette Supplement references for new legislation (where the text is to be

<sup>2</sup> (1997) 7 HKPLR 286.

<sup>3</sup> [1997] 1 HKC 89.

found), with case names and references where legislation has been judicially cited, and with references to articles (in the same range of journals) where the legislation has been discussed. For other jurisdictions only the last category of information is given.

Overall this seems a half-hearted and unprofessional publication, put together by computers and not by lawyers.

### The electronic revolution

Both CD publications have been welcome additions to the legal library, and are reasonably easy to use. They have been given the approval as user-friendly by first-year law students at the University of Hong Kong. This is not to say there is no room for improvement. Nor can electronic versions replace paper ones for law reports which one uses frequently. Most of us find it more convenient to read a page of text than a screenful; not only can the screen be tiring, but one can scan the printed page far faster than one can scan the digital page, divided as it is into several small sections on the screen. Even finding cases is faster with a good index volume. But once you would have to look in several index volumes or sections the CD comes into its own. And it offers the possibility of searching whole text rapidly for things which indexers may not be interested in. And it frees us from the limitations of other people's indexing.

#### *Hong Kong Cases on CD*

This publication is essentially the paper version in CD format. The software — Folio — is used in many other legal databases, such as Current Legal Information, and the searching techniques are reasonably straightforward. You may choose to search the Index — subject index or index of cases reported. Or you may choose to search the entire database. Even there you may narrow your search, by use of the template, to certain parts of the case — such as the name or the catchwords or cases cited or the name of the judge, or several of these. So you could find everything that a particular judge has said about a particular topic, for example. Pursuing my defamation interests, I tried the following boolean search in the Index database: (defamation or libel or slander) and privilege. This found five cases. When I did the same search in the full database, I found several other cases, even though these words appeared in the catchwords. I eventually discovered that my search of the subject index did not link together the fact that a set of catchwords which contained 'privilege' appeared under the general heading 'Defamation'! Only if these words appeared in the second level indexing were they linked together. It is probably just as good to stick to the full database (Infobase!).

I have found this relatively easy to use. This is without much assistance beyond the small guide provided and without using the 'On-line' guide which

is not specific to the publication and takes more time than most people would be prepared to devote.<sup>4</sup> One complaint is that once a search has been done there is no display of the names of the cases found — just an indication of the number of ‘hits,’ which means number of subdivisions of cases, not number of cases. It is a slight irritant that there is no equivalent of the LEXIS command — next document. If you have on the screen a full case with each work you have asked for highlighted, clicking the ‘next’ button does not take you to the next document, or even to the next segment of the case, but to the next occurrence of a word you have asked for. This may be useful; to be able to do either would be good.

### LEXIS

HKC and the HKPLR are available on LEXIS. They must be searched separately — which means that if you assume, not unnaturally, that *HKSAR v Ma Wai-kwan* would be reported in the HKPLR you will be mystified to find it is not there!

### HKLRD on CD Rom

The appearance of this publication liberates one from the shortcomings of the index of the Digest about which I have felt a good deal of dissatisfaction. It certainly makes it much easier to find material from the Digest, which has never been consolidated other than year by year, over a period of years. What you get is essentially what you find in the printed version. This may give you an irritating number of ‘see xxx’ entries — and no hypertext link to that other entry.

Before long it will be possible to subscribe to a CD which goes right back to 1905 — so it will be possible to search the entire body of Hong Kong reported cases through one or other of these CDS.

At present the HKLRD CD is up-to-date only until the end of 1995. In effect this is a reissue of the previous version, with the cases added, also covering 1985–95. Apparently it is intended to bring out new issues which are current in the near future. The same information is available (or will shortly be available) in on-line format, for the same cost.

BLIS <http://www.justice.gov.hk/>

The availability of the Laws of Hong Kong on the Internet has perhaps been the most exciting recent development. The ability to search the entire body of legislation for the occurrence of particular words and phrases opens up interesting possibilities. It can ensure much more accurate and complete advice

<sup>4</sup> On the New South Wales Law Reports, published by Butterworths Australia and using the Folio software, there is a handy introductory guide to the system.



about the state of the law for practitioners, and new possibilities of research for academics. I have for example discovered various examples of absolute privilege for the purposes of defamation which I had not known existed by searching for words like 'privilege' and 'defamation.' The search techniques are straightforward and the layout clear and pleasant. It compares very well, for example, with the Australasian Legal Information Institute site at <http://www.austlii.edu.au/>.

Having used BLIS quite frequently — though not using the Lotus Notes software which apparently allows one to download pieces of legislation in full with formatting — I have few complaints. Unless I know that I want a particular ordinance, of which I know the cap number, and that the section I need is an early one, I would always use the advanced search, and within that would choose 'search section(s) or enactment(s)' which enables one to search for a specific section, or a word, or for a word within a section or enactment; it allows a simple boolean search — defam\* or slander or libel for example — which would look for any section which contains defamation or defamatory or slander or libel. The 'Search for word(s)' enables more complex searches which can be case-sensitive, and look for one word near another or in the same sentence or paragraph.

I would offer one hint — always remember that the settings down the left-hand side of the screen (covering whether you are searching English or Chinese, ordinances, subsidiary legislation or both, current or past legislation or both) govern what you can search for.

And I have one or two minor gripes. When you first enter BLIS you are faced with a list of ordinances beginning with cap 1. If you know that you want an ordinance with a particular number you may put its number in the little window described as 'row number' and click on 'View now.' As you are warned, in a few instances the ordinance that now appears as first on the list will not be the one you have asked for — but it should be in the list now visible on your screen, so this is not a serious problem. The most irritating is that the buttons to click to move from the screen you are on (such as 'Next List,' 'Next section' etc) only appear at the top of a screen, yet very often you will want to take such a step when you have finished scrolling through what you have on the screen — which might be a long section or schedule.

And until you are used to using the system you may forget that when you carry out a search only 25 items will be retrieved as the default. You can change this — to as many as 4,999 'hits.' Generally speaking, it seems to me, it is best to ask for more hits than you expect. You are told that if you only want a few then you can leave the number at 25; but how can you be sure that what you want will be in the 25 first retrieved? It really does not take much longer to search for more entries and you can then be sure you have found everything you want.

*Hong Kong case law on the Internet*

At last we are beginning to get there. The decisions of the Court of Final Appeal are the first to be placed on the Internet. This means the small number of interlocutory decisions and the one final decision which, at the time of writing, the court has actually handed down. These may be found at <http://www.info.gov.hk/jud/guide2cs/html/faj.htm>. Thus far there is simply the text of the judgments and it is too early to think of search engines. But what a pity that Hong Kong has been not a leader but a footdragger in this field. The highest courts of the US, Canada, Australia, and even of the more conservative UK have had their judgments on the Net for some time, and in the first three countries the judgments of many other courts are also available, making a most valuable resource for research. The judiciary in Hong Kong, although able to provide cases on line for their own use, seem reluctant to extend such a service to the public.

We must at least be grateful that the government has not emulated that of Singapore which is making most of its material, case law and legislation, available only for a fee. This site is at <http://www.gov.sg/agc/agcciss/lawnet/>.

*The cost of all this*

Use of the Internet (apart from connection costs and subscription to one's Internet Service Provider) is free. The other electronic sources will cost so many arms and legs that you will be left with none! The current cost of the HKLRD CD is \$24,000 for the initial version covering 1985–95, or \$63,000 for the 1905–96 version plus in each case the annual subscription of \$8,000. For existing subscribers to the paper version of the Digest the costs are \$22,000 or \$59,000 respectively. For the Hong Kong Cases CD you will be set back \$28,000 for the CD if you are not a subscriber to the paper version and \$18,000 if you are, with a \$2,800 annual subscription.

**Conclusion**

Hong Kong is a small jurisdiction with high overhead costs in terms of office square footage and legal expertise, and there is no doubt that publishers face a problem in establishing a reliable operation of sufficiently high standard. Recent developments here have also been very complex, whether one is talking about securities regulation, constitutional law, insolvency, land titles, or human rights. There is also no doubt that the situation is greatly improved even in the seven and more years that this commentator has worked here. Yet we do seem to have some way to go. The delay in the appearance of some elements of Butterworths' scheme of things, such as the sometimes tardy appearance of the Parts of Hong Kong Cases, or the non-appearance of the later volumes of the consolidated index of reported cases, indicates perhaps that the company

has bitten off rather more than it can chew — it has committed itself either to more than its staff can cope with or than the volume of interesting Hong Kong material justifies, or to more than the market is prepared to bear.

On the paper side of things, we currently have one fairly reliable series of law reports (bracketing together HKC and HKPLR) and one series which, it might be argued, survives by a marketing technique reminiscent of the way Bill Gates has tried to foist Internet Explorer on the computing world. It is particularly regrettable that the government has been a party to this arrangement. One would feel less concerned if the product with which the HKLR are packaged was itself better. The Digest has changed little in recent years and remains weak in comparison with similar publications elsewhere.

If Hong Kong Current Law were more of a competitor Pearson Professional might find that the HKLRD ceased to sell at all well. We could perhaps do without the HKLR; although it contains some cases not reported by Hong Kong Cases, one suspects that closer investigation would not so much show that there are important cases which appear in the HKLR alone, but that different editors have varying views of what to select among the ultimately unimportant cases. Even the claim that they are 'authorised' seems to be pretty meaningless, as we have seen. But as things are, Hong Kong Current Law is a publication which brings no honour to the name of a distinguished law publisher. Money has come to dominate the publishing business. This is not a 'Hong Kong bashing' statement. Sweet and Maxwell and Butterworths are the oldest law publishers in the UK, and their arrival on the Hong Kong scene is recent and all concerned with making money. Sweet and Maxwell were long ago taken over by the US conglomerate ABP, and Butterworths belong to Reed Elsevier while Pearson Professional is part of a media conglomerate which includes the Financial Times, Longmans, Pitman, Penguin, and Madame Tussauds! Hong Kong law publishing is in the hands primarily of these giants, at least for reference material of the type discussed here. The Hong Kong legal community is paying dearly for their services, but those services do not always attain the level of professionalism which one would hope for.

*Jill Cottrell\**

*Postscript:* When this comment was at the proof stage I learned that Sweet and Maxwell have taken over the local operation of Pearson Professional. It seems unlikely that both the Hong Kong Law Digest and Current Law Hong Kong will survive. Can we look forward to a new publication with the virtues, such as they are, of both, or even with those of Current Law in the UK?

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